**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE**

**MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929**

**WP(C).No. 6443 of 2004(P)**
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**OS.2035/1998 of PRL.M.C.,TRIVANDRUM**
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**PETITIONER:**
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**M.NATARAJAN, S/O.MUTHAYYAN NADAR,**
**T.C.39/528-1 &2, MALAKKARIKADA ROAD,**
**CHALAI BAZAAR, THIRUVANANTHAPURAM.**

**BY ADV. SRI.M.R.ANANDAKUTTAN**
**SRI.B.SATHIQ**
**SMT.SHIRMILA. C.S.**

**RESPONDENTS:**
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1. **C.SUBRAMANIAN, PLOT NO.226,**
   **NEAD THEATRE COMPLEX, ANNA NAGAR, MADURAI,**
   **TAMIL NADU.**

2. **SHANMUGHARAJA, OF DO. DO. DO.**

3. **P.S.PERIYASWAMI NADAR, S/O.PAUL NADAR,**
   **MALAKKARIKKADA ROAD, CHALAI, THIRUVANANTHAPURAM.**

4. **K.K.KUMAR, S/O.KUMARAVEL,**
   **KATTAKKULANGARA VEEDU, ARUVAKKODE, INCHIVILA,**
   **PARASSALA, THIRUVANANTHAPURAM.**

**BY ADV. SRI.L.MOHANAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C) NO. 6443/2004**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE IA. 8457/03 DT.19.9.03 BEFORE THE HONOURABLE MUNSIFF'S COURT, THIRUVANANTHAPURAM.**

**EXT.P2:- COPY OF THE ORDER IN IA. NO.8457/2003.**

**EXT.P3:- COPY OF THE IA. NO.9110/03 DT.9.10.03 BEFORE THE HONOURABLE MUNSIFF COURT, THIRUVANANTHAPURAM.**

**EXT.P4:- COPY OF THE ORDER IN IA. NO.9110/03 IN OS. NO.2-35/98 DT.14.10.03 OF THE PRINCIPAL MUNSIFF COURT, THIRUVANANTHAPURAM.**

**/TRUE COPY/**

**P.A. TO JUDGE**

**tss**

**PIUS C. KURIAKOSE, J.**

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**W.P.(C) NO. 6443 of 2004**

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**Dated this the 6th day of August , 2007**

**JUDGMENT**

It is conceded before me that respondents 3 and 4 have been served with notice in this writ petition. Since only the petitioner and respondents 3 and 4 are the concerned parties in this writ petition and since the concerned parties are already appeared before this court, the writ petition need not be treated as defective.

2. Submissions of the learned counsel for the petitioner notwithstanding ,I do not find any warrant for interfering with Ext.P4 order passed by the learned Munsiff in the visitorial jurisdiction of this court under Article 227 of the constitution. Under Ext.P4, the learned Munsiff has refused to review an earlier order allowing a restoration application to restore the suit on condition to remit Rs.1,500/- by way of cost. According to the learned counsel for the petitioner, the petitioner, who is only a vender in vegetables, is not able to afford the said amount. The counsel further submitted that the dismissal of the suit on the ground that the plaintiff is not present is totally unjustified since the petitioner was not expected to be present on that day. The plaintiff's counsel was present and he was ready to cross examine the

defendants' witness. The latter submission of the learned counsel for the petitioner is not very seriously opposed by the learned counsel for the respondents.

Under the above circumstances, I refuse to set aside the learned Munsiff's order imposing cost on the petitioner for allowing the review. But I modify the said order by reducing the same cost to Rs.500/-. (Rs.Five Hundred only). The petitioner is directed to pay the sum of Rs.500/- within three weeks from today. Upon such payment, the application for restoration will stand allowed. The impugned orders is set aside in view of the above directions.

**PIUS C. KURIAKOSE,**

**JUDGE.**

dpk